

UNITED STATES OF AMERICA 111 FERC ¶61,067
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

United States Department of Energy --
Southeastern Power Administration
(Jim Woodruff Project)

Docket No. EF04-3031-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES
ON A FINAL BASIS

(Issued April 18, 2005)

1. In this order, we confirm and approve on a final basis Southeastern Power Administration's (Southeastern) power sales rates. This order benefits customers because it ensures that the power sales rates are consistent with applicable law and thus are the lowest possible rates to customers consistent with sound business principles.

Background

2. On September 13, 2004, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of Southeastern's Rate Schedules JW-1-H and JW-2-E for the sale of power from Southeastern's Jim Woodruff Project.¹ The Deputy Secretary placed the rates into effect on an interim basis effective

¹The Jim Woodruff Project is a multipurpose hydroelectric project, whose power output is sold to Florida Power Corporation and preference customers in Florida.

September 20, 2004,² and requests final confirmation and approval of the rates for the period September 20, 2004 through September 19, 2009.³

3. Southeastern explains that the current rates are not adequate to meet the repayment criteria. Southeastern further explains that its proposed rates, with a revenue increase of \$2,182,000, will meet the repayment criteria in fiscal years 2005, 2006, and 2007.

Notice of Filing and Interventions

4. Notice of the application was published in the *Federal Register*, 69 Fed. Reg. 57,274 (2004), with protests and interventions due on or before October 4, 2004.

5. Southeastern Federal Power Customer, Inc. (SFPC) filed a timely motion to intervene and protest. SFPC requests the Commission to reject Rate Schedules JW-1-H and JW-2-E because the rates are inconsistent with the Flood Control Act of 1944,⁴ do not comply with the standards of the Department of Energy's Delegation Order⁵ and the Department of Energy's Order No. RA 6120.2, and constitute an arbitrary and capricious exercise in ratemaking. SFPC also requests the Commission to return the proposed rate to the Department of Energy with instructions to develop a lower rate that is consistent with the Flood Control Act.

6. Specifically, SFPC points out that Southeastern is nearing the end of the fifty-year repayment period in which it must collect original investment and interest in the Jim Woodruff Project and that, because of a number of factors, including new plant investment at the Jim Woodruff Project, Southeastern is proposing a substantial increase over a three-year period followed by a modest increase for the two subsequent years. SFPC states that it suggested that Southeastern defer the costs associated with the new

²Rate Order No. SEPA-45, placing the rate schedules into effect on an interim basis, was issued on September 9, 2004, under authority delegated to the Deputy Secretary by Department of Energy Delegation Order No. 00-037.00.

³Rate Schedules JW-1-H and JW-2-E supersede the present rate schedules, which were approved on a final basis in *United States Department of Energy – Southeastern Power Administration (Jim Woodruff Project)*, 103 FERC ¶ 62,003 (2003).

⁴ See 16 U.S.C. § 825s (2000).

⁵ Department of Energy Delegation Order No. 00-037.00, I FERC Stats. & Regs. ¶ 9919 (2001) (Delegation Order).

plant for at least three years, i.e., until the end of the repayment period in 2007, to be recovered after the original plant and investment have been recovered. According to SFPC, Southeastern rejected SFPC's solution because the deferral would occur over a thirteen-year period, which Southeastern viewed as too long under Department of Energy Order No. RA 6120.2. According to SFPC, Southeastern is misreading that order and confusing deferral for recovery.

7. According to SFPC, even assuming that Southeastern is correctly reading the deferral provision in Department of Energy Order No. RA 6120.2, it is applying that provision inconsistently. SFPC points out that Southeastern has determined that the provision can be invoked for the collection of capitalized deficits from the years 1999, 2000 and 2001 which is eight years after each was first incurred. SFPC argues that, in this case, Southeastern failed to explain why, in comparison to eight years, thirteen years is too long. SFPC concludes that the Commission should remand the proposed rates to Southeastern for reformulation so that the appropriate amounts are recovered, while deferring the collection on the new plant until 2007. With this reformulation, according to SFPC, Southeastern will charge the lowest possible rate consistent with sound business principles.

Discussion

Procedural Matters

8. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene serves to make SFPC a party to this proceeding.

Standard of Review

9. The Secretary of Energy has delegated the authority to confirm and approve Southeastern's rates on a final basis to the Commission,⁶ and established the scope of Commission review. The scope of Commission review is limited to:

whether the rates are the lowest possible to customers consistent with sound business principles;

whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy including the repayment, within the period of cost recovery permitted by law, of the

⁶ *Id.*

capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and

the assumptions and projections used in developing the rate components that are subject to Commission review.⁷

10. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.⁸ The Commission may reject the rate determinations of Southeastern's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (e.g., Department of Energy Order No. RA 6120.2, which prescribes financial reporting policies, procedures, and methodologies), or if they violate agreements between Southeastern's Administrator and the applicable power generating agency.

11. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. In other words, the Commission does not develop a record on its own. Consequently, the Commission only confirms and approves, or remands, the rates submitted to it for final review.⁹

12. By statute,¹⁰ Southeastern must repay the federal investment from power revenues within a reasonable period of time, which as a general practice is 50 years. Our review of Southeastern's Power Repayment Study (PRS) indicates that the revenues to be collected under the proposed rates will be sufficient to recover Southeastern's costs,

⁷*Id.*

⁸The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission. These agencies build and operate various projects. The power marketing administrations, such as Southeastern, market the output of the projects.

⁹*See, e.g., United States Department of Energy - Western Area Power Administration (Boulder Canyon Project)*, 61 FERC ¶ 61,229 at 61,844 (1992), *aff'd in relevant respects, Overton Power District No. 5 v. Watkins*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss, Overton Power District No. 5 v. O'Leary*, 73 F. 3d 253 (9th Cir. 1996); *United States Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058 at 61,240-41 & nn.17 & 20, *reh'g denied*, 60 FERC ¶ 61,002 (1992).

¹⁰ 16 U.S.C. § 825s (2000).

including the recovery of the remaining federal investment, with interest, over the remaining repayment period. Moreover, since the revenues generated by the proposed rates recover no more than Southeastern's annual costs and the remaining federal investment, the rates are the lowest possible to customers. Our review also indicates that the PRS was prepared in a manner consistent with Department of Energy Order No. RA 6120.2, which requires that Southeastern's system financial statements must be prepared in accordance with generally accepted accounting principles, as appropriate, and that its PRS be prepared using sound forecasting techniques designed to approximate as closely as possible actual results.

13. In its protest, SFPC challenges the timing Southeastern is using in its proposed rates for the recovery of costs associated with new plant investment at the Jim Woodruff Project. SFPC does not challenge the costs associated with the new plant or the reasonableness of those costs. SFPC simply argues that Southeastern has other options for providing for the recovery of these costs, i.e., over a longer period of time than that used by Southeastern in this proceeding. SFPC has not, however, demonstrated that Southeastern's provision for the recovery of the costs associated with the new plant violates Department of Energy Order No. RA 6120.2. Absent a showing by SFPC that Southeastern violated Department of Energy Order No. RA 6120.2, the Commission declines to substitute its policy judgment for that of Southeastern's Administrator in providing for the recovery of these costs in these rates.

14. Because Southeastern's proposed rates are consistent with the standards by which they must be judged, they merit final confirmation and approval.

The Commission orders:

The Commission hereby confirms and approves on a final basis Southeastern's proposed Rate Schedules JW-1-H and JW-2-E for the period September 20, 2004 through September 19, 2009.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.